

58472-LSK

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HESTER MENDEZ and GILBERT MENDEZ,
for themselves and on behalf of their minor
children, PETER MENDEZ and JACK MENDEZ,

Plaintiffs,

v.

THE CITY OF CHICAGO; Chicago police officers
JOSEPH T. CAPELLO IV (#10626);
LIEUTENANT SAMUEL DARI (#603);
MICHAEL W. DONNELLY (#13784);
SERGEANT RUSSELL A. EGAN (#998);
MICHAEL J. GUZMAN (#15911); JOSE M.
HERNANDEZ (#15925); and ERIC M.
SEHNER (#11641),

Defendants.

No. 18 CV 05560

Judge John Z. Lee

Magistrate Judge Young B. Kim

**DEFENDANT OFFICERS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' FOURTH AMENDED COMPLAINT**

NOW COME the Defendants, CHICAGO POLICE OFFICERS JOSEPH T. CAPELLO IV (#10626); LIEUTENANT SAMUEL DARI (#603); MICHAEL W. DONNELLY (#13784); SERGEANT RUSSELL A. EGAN (#998); MICHAEL J. GUZMAN (#15911); JOSE M. HERNANDEZ (#15925); and ERIC M. SEHNER (#11641), by and through their attorneys, QUERREY & HARROW, LTD., and for their Answer and Affirmative Defenses to Plaintiffs' Fourth Amended Complaint, state as follows:

INTRODUCTION

1. Plaintiffs, by and through their attorney, Law Offices of Al Hofeld, Jr., LLC, bring this action against defendant City of Chicago pursuant to 42 U.S.C. § 1983 for traumatizing two little boys and their family, and state as follows:

ANSWER: Defendants admit that Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 but deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

2. On November 7, 2017, while executing an invalid search warrant for the wrong apartment, Chicago police officers repeatedly pointed and held guns directly at Jack and Peter Mendez, ages 5 and 9, as well as their mother and father in the boys' presence, while in the family's home. Officers' guns were loaded, and their fingers were on the triggers. Jack and Peter posed no apparent, actual or possible threat whatsoever to the officers. Peter cried and pleaded for officers not to shoot and kill his father.

ANSWER: Defendants admit that on November 7, 2017, they executed a valid search warrant issued for the address of 3557 S. Damen Ave., Apt. 2. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 2 and thus deny the remaining allegations in paragraph 2.

3. Officers also handcuffed the boys' father, Gilbert Mendez, and kept him in handcuffs, in front of his sons, throughout the duration of officers' search. Officers never had a reason to arrest or handcuff Mr. Mendez, let alone keep him handcuffed after they became aware they had raided and searched the wrong apartment. During this time, Jack and Peter cried and pleaded with officers not to take their father to jail.

ANSWER: Defendants admit that Gilbert Mendez was initially handcuffed upon the entry of the officers into the apartment at 3557 S. Damen Ave., Apt. 2. Defendants admit that Plaintiffs Jack and Peter Mendez initially were upset when Plaintiff Gilbert Mendez was first brought into the living room in handcuffs, but quickly calmed and proceeded to converse with officers in friendly fashion. Further answering, Defendants admit that an

officer explained to Plaintiff Gilbert Mendez in the presence of his family that he was just being detained and that he was not under arrest. Defendants deny that Gilbert Mendez was detained in handcuffs throughout the duration of the officers' presence in the apartment and further deny all remaining allegations in paragraph 3.

4. Upon entering the Mendezes' apartment, officers were screaming and cursing abusively at Mr. and Mrs. Mendez in the boys' presence.

ANSWER: Defendants deny the allegations in paragraph 4.

5. Even after learning they were in the wrong apartment, officers not only did not explain their mistake, but they continued their illegal search. They found nothing illegal. They arrested and charged no one. When they finished searching, they simply left. On information and belief, officers never reported to the City of Chicago the damage they did to plaintiffs' apartment.

ANSWER: Defendants admit that nothing illegal was recovered by the officers during their presence in the apartment, although Plaintiff Gilbert Mendez admitted to having smoked marijuana, and also admitted he had a small amount of marijuana stored inside the residence, and that there was no arrests made or charges brought as a result of the execution of the search warrant. Defendants deny the remaining allegations in paragraph 5.

6. In fine (sic), Chicago police terrorized the innocent, Mendez family in their home for no reason. The actions toward Peter, Jack and their parents were not only the product of an easily avoidable mistake; they were totally unnecessary, unreasonable, and without any lawful justification.

ANSWER: Defendants deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred and therefore deny the allegations in paragraph 6.

7. Nine months later, on the filing date of this complaint, Peter and Jack Mendez still suffer severe, emotional and psychological distress and injury as a direct result of their exposure to defendants' unnecessary and terrifying conduct. Their deep distress and related symptoms constitute scars on their young psyches that may never fully heal.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 regarding any emotional and/or psychological condition of Peter and/or Jack Mendez. Defendants deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

JURISDICTION AND VENUE

8. This action arises under 42 U.S.C. § 1983 and *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction of plaintiffs' state law claims.

ANSWER: Defendants admit that Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 and that Plaintiffs make claims pursuant to *Monell v. Department of Social Services of the City of New York* and Illinois state law. Defendants admit that this Court has jurisdiction over this matter. Defendants deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

9. Venue is proper pursuant to 28 U.S.C. § 1391(b). The underlying events occurred within the Northern District of Illinois; defendant City of Chicago is a municipal corporation located within the District; and all parties reside in the District.

ANSWER: Defendants admit that venue is proper in this Court and that the City of Chicago is a municipal corporation located within the Northern District of Illinois. Defendants further admit that the underlying events occurred within this district but deny that those events occurred in the manner alleged by Plaintiffs. Defendants further deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where Plaintiffs currently reside.

PARTIES

10. At the time of all relevant events, plaintiff Jack Mendez was a five-year-old boy residing with his mother and father at 3557 S. Damen Avenue, 2nd floor, Chicago, Illinois 60609. On November 7, 2017, Jack was in kindergarten.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10.

11. At the time of all relevant events, plaintiff Peter Mendez was a nine-year-old boy residing with his mother and father at 3557 S. Damen Avenue, 2nd floor, Chicago, Illinois, 60609. On November 7, 2017, Peter was in the 4th grade.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11.

12. Plaintiff Hester Mendez (or “Mrs. Mendez”) is Peter and Jack’s natural mother. Plaintiff Gilbert Mendez (or “Mr. Mendez”) is Peter and Jack’s natural father. At the time of all relevant events, Mr. and Mrs. Mendez also resided at 3557 S. Damen Avenue, 2nd floor, Chicago, Illinois, 60609.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12.

13. Mr. and Mrs. Mendez are U.S. citizens. They are legally married. At the time of all relevant events, Mr. Mendez worked full-time as a House Keeping Assistant for a prestigious hospital in Chicago. Mrs. Mendez worked full-time as an Administrative Assistant for a major health insurance company in Chicago.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13.

14. Neither Mr. nor Mrs. Mendez have ever been arrested; neither have any criminal records of any kind. Neither have ever been involved in any illegal activity.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14.

15. Mr. Mendez is Hispanic-American. Mrs. Mendez is Native-American. They consider their sons to be Hispanic-American.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15.

16. Defendant City of Chicago is a municipal corporation under the laws of the State of Illinois.

ANSWER: Admitted.

17. At the time of all relevant events, Joseph T. Capello IV (star #10626) was a Chicago police officer assigned to the Bureau of Patrol, 11th District. He and presently unidentified Chicago police officers participated in obtaining the search warrant for the Mendez's apartment. Chicago police officer and defendant Lieutenant Samuel Dari (star #603) approved the warrant, both pre- and post-execution.

ANSWER: Defendants admit that Officer Capello was the affiant for the search warrant in question. Defendants further admit that Lieutenant Dari approved the warrant. Defendants deny that the search warrant executed was invalid as alleged by Plaintiffs and further deny any wrongful conduct and violations of Plaintiffs' rights.

18. Officer Capello and the following Chicago police officers participated in the execution of the invalid search warrant inside plaintiffs' apartment on November 7, 2017: Michael J. Guzman (star #15911), Jose M. Hernandez (star #15925), Eric M. Sehner (star #11641), Sergeant Russell A. Egan (star #998), and Michael W. Donnelly (star #13784). Sergeant Egan was the search team supervisor and the supervising officer on the scene.

ANSWER: Defendants admit that Officers Capello, Guzman, Hernandez, Sehner, and Donnelly, as well as Sergeant Egan were present for the execution of the search warrant in the second floor residence on November 7, 2017. Defendants further admit Sergeant Egan was the search team supervisor. Defendants deny the allegations that the search warrant was invalid and further deny any wrongful conduct and violations of Plaintiffs' rights.

19. On information and belief, the vast majority of officers who participated in the raid and search of plaintiffs' home on November 7, 2017, were Caucasian males.

ANSWER: Defendants admit that of the officers who executed the search warrant at 3557 S. Damen Avenue on November 7, 2017, a greater number were Caucasian than Hispanic or African American. Defendants further admit that Officer Calhoun, who is African-American, entered the residence only briefly as a uniformed officer and was not a part of the execution of the warrant.

20. When Chicago police officers were present at plaintiffs' home on November 7, 2017, they were at all times acting under color of law and within the scope of their employment as officers of the Chicago Police Department ("CPD") for the City of Chicago.

ANSWER: Admitted.

Overview: CPD's M. O. is to Unnecessarily Use Force Against or in the Presence of Children

21. Chicago police officers have a *de facto* policy, widespread custom or *M. O.* of unnecessarily using force against or in the presence of children (ages 0-14), which traumatizes them.

ANSWER: Defendants deny the allegations in paragraph 21.

22. The 2017 United States Department of Justice investigation into the Chicago Police Department ("CPD") concluded that CPD has a pattern and practice of using less-than-lethal, excessive force against children for non-criminal conduct. (U.S. Dept. of Justice *Investigation of the Chicago Police Department*, Civil Rights Division and U.S. Attorney's Office for the Northern District of Illinois, Jan. 13, 2017, pp. 34-35). In addition, the 2016 report of the mayoral-appointed Chicago Police Accountability Task Force ("PATF") contained related conclusions and recommended specific police reforms to improve police-youth interactions.

ANSWER: Defendants admit, upon information and belief, that the United States Department of Justice conducted an investigation into the Chicago Police Department, and that the “PATF” issued a 2016 report, but lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 22 regarding specific contents of the reports issued.

23. None of the reforms that CPD has implemented or announced to date purport to remedy or address this problem. The federal consent decree agreed to by the City of Chicago and the State of Illinois does not address it.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23.

24. CPD’s recently revised use of force policy, GO3-02, does not require officers to avoid using unnecessary force against or in the presence of young children whenever possible and does not require officers to use a trauma-informed approach to the use of force in situations where some police force is necessary.

ANSWER: Defendants deny the allegations in paragraph 24 to the extent they suggest that Chicago Police Department General Order G03-02 does not prohibit the use of excessive force and does not contain provisions directing officers to use only force that is reasonable, necessary and proportional to the threat, actions, and level of resistance offered by a subject. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 24 regarding what is meant by the description of a “trauma informed approach” to the use of force.

25. Unlike other major U.S. metropolitan police departments – such as Cleveland, Indianapolis, Charlotte, Baltimore and others – CPD still does not provide any training or supervision to officers concerning youth brain development or the importance of preventing trauma to young children by utilizing a trauma-informed approach to the use-of-force in situations where children are present.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 25 regarding what is meant by the description of a “trauma informed approach” to the use of force. Defendants further lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding what other police departments in the United States may or may not include in specific departmental training.

26. The connection between trauma and mental and physical health in children’s development is now well-established and well-understood.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 26.

27. The effect of police use of force on poor, children of color of is known to be especially traumatic to them because many of them have already been subjected to multiple traumas in the communities and circumstances in which they live.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 27.

FACTS RELATING TO ALL COUNTS

***The Chicago Police Used Unreasonable and Unnecessary Force
Against Peter and Jack Mendez and Against their Parents in the Boys' Presence***

28. At approximately 4:10PM on November 7, 2017, officer Capello swore out and obtained a search warrant authorizing the search of “Curtis Roberts” and Patricka A. Cavazos” and of the premises at “3557 S. Damen Avenue, 2nd floor, Chicago, Cook County, Illinois.” The warrant also authorized the seizure of illegal drugs, paraphernalia, cash, records of illegal drug transactions, and residency documents.

ANSWER: Admitted.

29. The three-story, multiunit, family building at 3557 S. Damen contained three units, one each on the first, second and third floors. The intended targets of the warrant, Curtis Roberts and Patricka Cavazos, lived on the third-floor, not the second-floor. The search warrant inaccurately assumed that the targets lived on the second-floor; they never lived in the second-floor apartment. Plaintiffs alone lived in the three-bedroom apartment located on the second floor for several years preceding the warrant.

ANSWER: Defendants admit that the residential building at 3557 S. Damen Ave. contains three units, one on each floor. Defendants admit that the intended targets of the search warrant were Curtis Roberts and Patricka Cavazos, who from information obtained from the affiant’s informant, were reasonably believed to have resided in the second floor unit, as described in the search warrant. Defendants deny the characterization that the search warrant inaccurately assumed that the targets lived on the second-floor. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning how long Plaintiffs resided on the second floor.

30. Moreover, the targets of the warrant had no contact whatsoever with plaintiffs' apartment or plaintiffs, other than to occasionally pass them as neighbors. Plaintiffs had noticed that they did not seem to work and that they drove a BMW and a Mercedes that they would park on the street.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 30.

31. As detailed below, officer Capello and other officers involved in obtaining the search warrant performed no independent investigation or surveillance to verify that the apartment number given them by a John Doe confidential informant was accurate. At all times, defendant officers lacked probable cause for a warrant to search plaintiffs' apartment, the second-floor apartment.

ANSWER: Defendants deny the allegations as set forth in paragraph 31.

32. In fact, defendant Cappello has a pattern and practice of performing inadequate investigations leading to search warrants that lack probable cause, including a failure to independently verify information provided by informants. He has a related background and history of failing to understand how to competently perform basic police investigations, including investigations underlying search warrants, and failing to understand and utilize basic, police procedures applicable to children.

ANSWER: Defendants deny all allegations as set forth in paragraph 32.

33. Moreover, the defendant officers involved in obtaining and executing the residential search warrant took no steps to determine whether children resided in the second floor

apartment or to avoid entering that apartment and executing the warrant at a time when children were likely to be present.

ANSWER: Defendants deny the allegations in paragraph 33.

Officers Enter the Wrong Apartment and Point Guns at the Children and Their Parents

34. Bodycam video from four of the approximately seven officers who entered plaintiffs' apartment exists and corroborates plaintiffs' detailed allegations below. (FCRL 1, 2, 3, 5, and 7). This number includes one body cam video that appears to be incomplete. (FCRL 7). The remaining three officers were also wearing bodycams – a fact which is visible from existing bodycam videos – but the City of Chicago has not produced videos from these bodycams and, as of October 17, 2018, claims not to know whether or not they exist.

ANSWER: Upon information and belief, Defendants admit that FCRL 1, 2, 3, 5, and 7 contain bodyworn camera footage from officers who were present at the execution of the search warrant on November 7, 2017. Further answering, on information and belief, Officer Capello was not wearing a Body Worn Camera inside plaintiffs' apartment and Sgt. Egan does not recall activating his Body Worn Camera inside plaintiff's apartment. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 34 regarding representations made by the City of Chicago regarding the existence and/or production of any additional bodyworn camera footage. Defendants deny any remaining allegations, including that the bodycam video fully corroborates Plaintiffs' detailed allegations.

35. Crucially, the “missing” bodycam footage is from the bodycams of officers who were with or near Mrs. Mendez and Peter and Jack Mendez in the living room at the time that plaintiffs allege officers pointed guns at the children.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 35 regarding whether certain bodyworn camera footage is “missing” and what it does or does not depict. Further answering, on information and belief, Officer Capello was not wearing a Body Worn Camera inside plaintiffs’ apartment and Sgt. Egan does not recall activating his Body Worn Camera inside plaintiff’s apartment. Defendants further deny any wrongful conduct and violations of Plaintiffs’ rights.

36. In fact, defendant officer Cappello checked out a working body camera before the raid on November 7, 2017, but failed to wear and activate it during the raid on plaintiffs’ home, contrary to CPD’s official mandate that officers wear them during law enforcement (sic) events, including the execution of search warrants.

ANSWER: Deny the allegations as phrased including characterizing the valid search warrant as a “raid,” and that on November 7, 2017 it was yet the “official mandate” that officers wear body cameras, as body cameras were new to the unit and officers were learning its usage, and admit that Officer Cappello was not wearing a body camera during the search warrant on November 7, 2017, and further deny all other conclusions and allegations in paragraph 36.

37. In the days before and after the raid, there were other instances when officer Cappello was on duty, had a working body camera, and failed to wear and/or activate it. CPD did not discipline him for these infractions or even open an internal complaint.

ANSWER: Defendants deny the allegations as phrased in paragraph 37 characterizing the valid search warrant as a “raid,” and regarding Officer Cappello’s body camera usage, and admit Officer Cappello has not been disciplined for his body camera usage, including when body cameras were new to the unit, which includes the date of the incident in question. Further answering, that there were instances early on where Officer Cappello’s body camera was out of service for repairs, and he was not equipped with a body camera on those instances.

38. Similarly, defendant Sergeant Egan checked out a working body camera before the raid of plaintiffs’ home on November 7, 2017, but failed to activate it during the raid. CPD did not discipline him for this infraction or even open an internal complaint.

ANSWER: Defendants deny paragraph 38 as phrased regarding characterizing the valid search warrant as a “raid,” but admit that Sgt. Egan was wearing his body camera and did not activate it on the November 7, 2017 search warrant. Also admitted that Sgt. Egan has not been disciplined for his body camera usage, which on the date of the incident body cameras were new to the unit.

39. Similarly, defendant Guzman activated his body camera during the raid of plaintiffs’ home but turned it on late, with results that it did not capture key events during the crucial, initial moments of the raid. CPD did not discipline him for this infraction or even open an internal complaint.

ANSWER: Defendants deny paragraph 39 a phrased regarding characterizing the valid search warrant as a “raid,” but admit that Officer Guzman first activated his body camera inside the apartment after putting down the heavy ram he was responsible for utilizing in the search warrant. Also admitted that Officer Guzman has not been disciplined for his body camera usage, which on the date of the incident body cameras were new to the unit.

40. At approximately 6:30 or 7:00PM on November 7, 2018, Jack and Peter were playing on the wood floor in the hallway. Five-year-old Jack was laying on the floor directly in front of the front door to the apartment. Peter was playing near him, a few feet away, across the narrow hall from the front door.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 40.

41. Without warning, Chicago police officers rammed once and broken open the front door to the Mendez’s apartment and charged inside, guns drawn and pointed at everyone they saw. They did not knock-and-announce their presence first and give plaintiffs an opportunity to open the door.

ANSWER: Defendants admit that forced entry was made into the residence at 3557 S. Damen Ave. on November 7, 2017. Defendants deny the remaining allegations in paragraph 41.

42. At that moment, Jack and Peter leapt up and scattered; they ran down the front hallway that led to the living room, where their mother had been watching TV. Two or three officers rushed after them. At least one of the officers who pursued them pointed a gun at the children’s backs.

ANSWER: Defendants lack knowledge as to where Jack and Peter were located prior to the officer's entry into the residence, but admit that Plaintiffs Jack and Peter Mendez were present in the second floor residence. Defendants deny the allegations in paragraph 42 regarding pointing guns at the children and therefore deny the remaining allegations in paragraph 42.

43. At the moment officers broke through the front door and entered, Mr. Mendez was walking through the kitchen, near the front door. Several officer charged at him with guns pointed directly at him, including a large, assault-type rifle, and shouted repeatedly (in essence and not *verbatim*), "Get down" and "Get the fuck down!" and "Don't make me shoot you!" Once down on the floor, officers shouted at him to get "facedown" and "shut up!" Mr. Mendez fully complied. While he was face-down on the kitchen floor, officers surrounded him and pointed guns downward at his prone body.

ANSWER: Defendants lack knowledge as to where Plaintiff Gilbert Mendez was located prior to the officers' entry into the residence, but admit that Plaintiff Gilbert Mendez was directed to get onto the ground after Defendants made entry into the residence and that he complied. Defendants admit that officers entering the residence had their weapons out and at the low ready position. Defendants further admit that on the bodyworn camera footage, officers can be heard shouting (in essence and not *verbatim*) "Chicago Police," "Search Warrant," and "Get Down." Defendants deny the remaining allegations as set forth in paragraph 43.

44. As Mr. Mendez was getting down to the kitchen floor, straight ahead of him in his line of sight he glimpsed his sons running down the hallway toward the living room with an

officer chasing behind them and holding a large gun pointed directly at their backs. The gun was approximately five feet from their bodies.

ANSWER: Defendants deny the allegations in paragraph 44.

45. As Peter was running away, he glanced behind him at the commotion and saw his father get face-down on the floor, with officers standing around him and pointing guns down at him. He heard what police shouted at his father; both boys did.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 45 regarding what Plaintiff Peter Mendez claims to have observed and heard. Defendants deny that officers were standing around Plaintiff Gilbert Mendez and pointing guns down at him. Defendants further deny as phrased the vague and conclusory allegations pertaining to officers shouting at Plaintiff Gilbert Mendez.

46. The terrifying image of this moment is forever burned into Peter's memory.

ANSWER: Defendants lack knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 46. Defendants further deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights.

47. When the officers chasing Peter and Jack entered the living room, Mrs. Mendez was standing by the middle window. After hearing noise, she had gotten up from the couch where she was watching TV. One officer shouted at her (in essence and not *verbatim*), "Get the fuck on the floor!" This officer pointed a large gun directly at her while repeatedly shouting this command.

ANSWER: Defendants lack knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 47 regarding what Plaintiff Hester Mendez was doing prior to Defendants making entry into the residence or what she heard. Defendants deny the remaining allegations as set forth in paragraph 47.

48. At least one officer in the living room pointed a gun at Mrs. Mendez.

ANSWER: Defendants deny the allegations in paragraph 48.

49. A moment before officers rushed into the living room, Peter and Jack had run into the living room, past their mother, to the couch along the far wall and were balled up next to each other in fetal position in the corner of the couch, cowering and visibly shaking. Their teeth were chattering audibly. Peter and Jack saw officers pointing guns at their mother, who was complying with officers' command to get down on the floor while trying to gather her sons and keep them safe.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 49 regarding what Plaintiffs Peter and Jack Mendez were doing prior to the time Defendants made entry into the residence. Defendants admit that following the Defendants making entry into the residence, Plaintiffs Hester, Peter, and Jack Mendez complied with directions made to persons within the residence to get onto the ground. Defendants deny the remaining allegations in paragraph 49.

50. As Mrs. Mendez got down on the living room floor, she was concerned about her sons, who were screaming (in essence and not *verbatim*), "mommy, mommy, what's going on? Why are the police here?" She told Peter to get down on the floor with her; he did. She got partway up from the floor to pull Jack, who would not move by himself, off the couch and down

onto the floor beside her. An officer yelled at her for making this move. She held her sons' hands.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 50 regarding particular concerns Plaintiff Hester Mendez may have had. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding what Plaintiffs Jack and Peter Mendez may have said at the time described in paragraph 50. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights alleged in paragraph 50.

51. After Mrs. Mendez and her sons were lying on the living room floor, an officer with a large pistol stood in front of them and continued to point the gun directly at her and her sons for several seconds.

ANSWER: Defendants deny the allegations in paragraph 51.

52. Mrs. Mendez began asking officers what they were doing in her home. "What is this about? I need to know." An officer responded (in essence and not *verbatim*), "We have a warrant ... That's all you need to know" and "We'll get to it when we get to it."

ANSWER: Defendants admit that Plaintiff Hester Mendez inquired generally regarding why Defendants were in the residence and that she was told that Defendants possessed a warrant.

53. The entire time they were in the apartment, officers never presented a search warrant to the Mendezes or told them why they were at their apartment in particular.

ANSWER: Defendants deny the allegations in paragraph 53.

54. After he got down on the kitchen floor, officers handcuffed Mr. Mendez's arms behind his back. Mr. Mendez, who was face down on the floor, felt a knee in his back and saw officers' shoes in his peripheral vision. Officers then held him down on the floor and questioned him. During this time, officers also searched him.

ANSWER: Defendants admit that after Plaintiff Gilbert Mendez was on the ground, he was placed in handcuffs. Defendants further admit that Plaintiff Gilbert Mendez was asked if he possessed weapons or contraband on his person and that he stated that he had a pocket knife on his person. Defendants further admit Plaintiff Gilbert Mendez was then given directions on how to go about standing up, which he did with the assistance of Officer Sehner. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 54 regarding what Plaintiff Gilbert Mendez saw or claims to have felt. Defendants deny that the bodyworn camera footage supports Plaintiff Gilbert Mendez's claim that a knee was pressed into his back.

55. During the whole time Mr. Mendez was pinned to the kitchen floor, Jack and Peter were screaming hysterically for their father and pleading with officers non-stop (in essence and not *verbatim*), "Don't shoot my daddy," "don't kill my daddy," "don't hurt my daddy," "why do you have my dad?" Mr. Mendez heard his sons screaming from his position on the kitchen floor at the opposite end of the apartment.

ANSWER: Defendants deny that Plaintiff Gilbert Mendez was pinned to the kitchen floor. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 55 regarding exactly what Plaintiffs Jack and Peter

Mendez were saying during this time and what Plaintiff Gilbert Mendez claims to have heard.

56. After he was handcuffed and heard an officer shout “clear,” Mr. Mendez started asking officers if he could go and calm his boys in the front room. Officers walked Mr. Mendez to the living room at gun point, fingers on the triggers.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 56 regarding what Plaintiff Gilbert Mendez heard. Defendants admit that after he was assisted to his feet, Plaintiff Gilbert Mendez was escorted to the living room to join the rest of his family. Defendants deny the remaining allegations in paragraph 56.

57. Once in the living room, officers put Mr. Mendez at the end of one couch, apart from his family, who, by that time, was seated on the other couch in the room. Officers would not let Mr. Mendez sit with his family. When he passed his sons for a moment, they bear-hugged their father and held onto him tightly. Mr. Mendez was unable to hug them back and give them physical comfort because officers kept handcuffs on him.

ANSWER: Defendants admit that when Mr. Mendez was escorted to the living room to join his family, he initially remained in handcuffs. Further answering, Defendants admit that Plaintiff Gilbert Mendez was permitted to walk around and stand next to the couch his family was sitting on until an officer asked him, “why don’t you just take a seat?” at which time Plaintiff Gilbert Mendez sat down on a couch in the living room near his family. Defendants deny the remaining allegations in paragraph 57.

58. After Mr. Mendez was left sitting in handcuffs in the living room in front of his sons, Peter and Jack began asking (in essence and not *verbatim*), “Why do you have my dad in handcuffs?” “Are you going to take him to jail?” And they pleaded with officers (in essence and not *verbatim*): “Please don’t hurt him,” “Don’t beat him,” “Don’t take him to jail,” “He didn’t do anything.”

ANSWER: Defendants admit the allegations in paragraph 58 as to the fact that Plaintiff Gilbert Mendez was in handcuffs when he was escorted to the living room to join his family. Defendants admit that when Gilbert Mendez reached the living room Plaintiffs Jack and Peter Mendez spoke to him, but Defendants lack knowledge or information sufficient to form a belief as to truth or falsity of the allegations in paragraph 58 regarding the exact things they said. Defendants further admit that on the bodyworn camera footage, the word “Daddy” can be heard, but not the other claimed phrases contained in paragraph 58.

***Officers Continue to Search the Wrong Apartment
and Keep Mr. Mendez Handcuffed, Even After They Had Notice***

59. Multiple instances in multiple bodycam videos from the incident show that, shortly after the search began, officers became aware that they were in the wrong apartment and that, after they were aware, they continued searching anyway and continued to keep Mr. Mendez in handcuffs. (*See, e.g.*, FCRL 1, 59:36; FCRL 2, 54:51, 55:41 (“Wrong fucking apartment”) and 58:71; FCRL 3, 59:34; FCRL 5, 53:22, 54:33, 59:10, 59:33 (“Finish searching, guys”), and 1:00:11 (“Take him out of cuffs”); and FCRL 7, 51:17, 55:42 (“He gave us the wrong apartment. Remember the pictures... I think its upstairs”) and 58:08).

ANSWER: Defendants admit that footage from the bodyworn cameras of the officers executing the search warrant depicts the fact that at some point after entering the second floor residence, officers became aware that Plaintiffs were not the target of the search warrant and that the information that was provided to the officers regarding the floor of the residence of the targets was incorrect. Defendants further admit that Plaintiff Gilbert Mendez was un-handcuffed within less than a minute and a half after Plaintiff Hester Mendez read the search warrant and told officers the targets lived upstairs. Defendants admit that following the entry into the residence, officers continued to clear the residence and that some officers performed some brief, surface-level searches of portions of the residence but deny the remaining allegations in paragraph 59.

60. While the family was sequestered in the living room, officers searched throughout the apartment. On that date, the Mendezes were in the process of packing their belongings for a move to a new apartment, and most of their things were already packed up in boxes lined up in the hallway and other places.

ANSWER: Defendants admit that they continued to clear the residence while Plaintiffs remained in the living room area of the residence, and that the apartment was filled with boxes. Defendants admit that Plaintiff Hester Mendez can be heard on bodyworn camera footage stating that the family is moving. Defendants further admit that Plaintiff Gilbert Mendez can be heard on bodyworn camera footage saying (in essence and not *verbatim*) that “there’s some open boxes; just help yourselves.”

61. Throughout the raid and search, Mrs. Mendez kept asking officers why they were in her apartment. They would not answer her.

ANSWER: Defendants admit that at some point after officers made entry into the residence, Plaintiff Hester Mendez asked why the police were there. Defendants deny the allegations in paragraph 61 to the extent they suggest Plaintiff Hester Mendez was never informed why the police were in the residence, as she was indeed informed they were there due to the fact they possessed a warrant.

62. Before executing the warrant, officer Capello and at least one other officer in the Mendezes' apartment had seen photos of the warrant's two targets (and the warrant contained detailed physical descriptions of the targets).

ANSWER: Admitted.

63. From the moment they entered the apartment and saw plaintiffs, all officers plainly saw that the physical characteristics and appearance of Mr. and Mrs. Mendez differed dramatically from those of the two targets. Among other things, the female named in the warrant was 5'8"; Mrs. Mendez was a mere 5'1."

ANSWER: Defendants admit that it was possible to observe Plaintiffs Gilbert and Hester Mendez upon entering the apartment and that various physical characteristics of Plaintiffs could be observed. Defendants deny the allegations in paragraph 63 to the extent they suggest it was possible to immediately determine these Plaintiffs' precise height and to the extent they suggest that based upon these physical characteristics it was immediately possible to tell whether either of the targets were in the second floor residence. Defendants further admit that one of the targets of the search warrant was a Hispanic female, and that they could not immediately discern that Mrs. Mendez was not the Hispanic female target,

nor a relative, associate, or friend, but that they were able to verify thereafter she was not the female target.

64. After officers had been searching for several minutes, Sgt. Egan set down a piece of paper on top of a box in the living room before continuing to search. Mrs. Mendez walked over and picked up the piece of paper, walked back to the couch, sat down again, and read it. It turned out to be a copy of the search warrant for “Curtis Roberts” and “Patricka A. Cavazos.”

ANSWER: Defendants admit that Sgt. Egan provided a copy of the search warrant to Plaintiffs and that Plaintiff Hester Mendez picked it up and observed it approximately 10 minutes after the officers entered the residence. Defendants deny that other than clearing the apartment, which was filled with boxes, that any detailed search continued of the apartment.

65. Mrs. Mendez then immediately told officers they were in the wrong apartment and that the people listed in the warrant live upstairs in the third-floor apartment.

ANSWER: Defendants admit that at one point during the time Defendants were present in the residence, Plaintiff Hester Mendez made statements regarding the targets of the warrant residing on the third floor.

66. The supervising officer tried to take back the copy of the warrant that Ms. Mendez had picked up. She said (in essence and not *verbatim*), “Oh no, I’m keeping this. This is my copy.”

ANSWER: Defendants admit that Plaintiff Hester Mendez said that she intended to keep the copy of the search warrant she was provided and that Sgt. Egan informed her that she

should keep it because as he previously informed her, “that’s what it was for.” Defendants deny any remaining allegations in paragraph 66.

67. Later, officers physically described the people they were looking for. In response, Mrs. Mendez said (in essence and not *verbatim*), “I know exactly who you are looking for, and they live upstairs. I’m telling you, you have the wrong apartment. “

ANSWER: Defendants admit that after officers had been inside the residence for approximately 10 minutes, the identities of the targets of the warrant were discussed in the presence of Plaintiffs. Defendants further admit that during this time Plaintiff Hester Mendez made statements regarding the targets of the warrant residing on the third floor.

68. At one point, as Mrs. Mendez was describing the people upstairs, she saw an officer look away, put his head down, and shake his head, saying “aw man... O Fuck,” as he appeared to realize that officers were, in fact, not in the apartment of the intended targets of the warrant.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 68 regarding what Plaintiff Hester Mendez claims to have seen or perceived regarding the officer described.

69. However, instead of immediately suspending their search and leaving, officers continued searching the Mendez’s apartment. Additionally, officers continued to keep Mr. Mendez in handcuffs and physically separated from his family. Moreover, they kept questioning Mr. and Mrs. Mendez. Officers continued to do all of these things long after they were well-aware that they lacked probable cause to enter and search plaintiffs’ apartment and detain plaintiffs.

ANSWER: Defendants admit that following the entry into the residence, officers continued to clear the residence and that some officers performed some brief, surface-level searches of portions of the residence. Defendants deny the allegations in paragraph 69 that Plaintiff Gilbert Mendez was kept “physically separated” from his family. Defendants admit that during conversations between some Defendants and Plaintiffs Gilbert and Hester Mendez, Plaintiffs were asked questions about subjects including, but not limited to, who else occupied the other units comprising the building and if they knew those individuals’ names. Defendants further admit that Plaintiff Gilbert Mendez was un-handcuffed within less than a minute and a half after Plaintiff Hester Mendez read the search warrant and told officers the targets lived upstairs. Defendants deny any wrongful conduct or violations of Plaintiffs’ rights occurred and thus deny any remaining allegations in paragraph 69.

70. Mrs. Mendez asked officers (in essence and not *verbatim*), “if you have the wrong apartment, why are you continuing to search?”

ANSWER: Defendants deny the allegations as phrased in paragraph 70.

71. Officers did not find any contraband in plaintiff’s apartment. Officers did not arrest, charge or issue a citation to any plaintiff.

ANSWER: Defendants admit that although Plaintiff Gilbert Mendez admitted to possessing Marijuana, no contraband was recovered from Plaintiffs’ residence nor were any of the Plaintiffs arrested, charged or cited for any offenses.

72. After being present in and thoroughly searching the Mendezes' apartment, officers left the building.¹ Immediately before they left they removed the handcuffs from Mr. Mendez.

ANSWER: Defendants deny the allegations in paragraph 72 regarding the residence being “thoroughly” searched. Defendants admit that they left Plaintiffs’ residence after being present in it for a period of less than 15 minutes. Defendants admit that approximately 11 minutes after officers entered the residence handcuffs were removed from Plaintiff Gilbert Mendez. Defendants admit this was approximately 2-3 minutes prior to officers exiting the residence. Defendants further admit that Defendant officers who comprised the search warrant team did not have a search warrant for the third floor and thus did not execute a warrant on the third floor. Defendants lack knowledge of information sufficient to form a belief as to the truth or falsity of the remaining allegations in Footnote 1.

73. Before they left the apartment, officers did not offer any explanation for their mistake. They never introduced themselves or gave their names or phone numbers for future questions, concerns or complaints that Mr. and Mrs. Mendez may have wanted to make about entering and searching the wrong apartment.

ANSWER: Defendants deny the allegations in paragraph 73 that Plaintiffs Gilbert or Hester Mendez were given no explanation whatsoever regarding why the officers were there, as it was explained in the presence of Plaintiffs that the officers had apparently been provided “wrong information” about Plaintiffs’ specific address that led to the issuance of the search warrant, to which Plaintiff Hester Mendez replied “that’s ok.” Furthermore,

¹ On information and belief, the Chicago Police Department did not ever execute a search warrant for the 3rd floor apartment on that date, any subsequent date, or for the persons listed in the warrant. Criminal history reports for both individuals reflect that neither individual was criminally charged on or after November 7, 2017.

Defendants admit that when told shortly before the officers left the residence that she could “probably extrapolate” the reason Defendants were there, Plaintiff Hester Mendez responded “no, I totally understand.” Defendants admit that they did not verbally provide their names or phone numbers to Plaintiffs, but deny Plaintiffs were left with no information as to who any of the Defendants were, as Plaintiffs were left with a copy of the search warrant. Defendants deny Plaintiffs Gilbert or Hester Mendez ever requested to make any complaint or requested specific information about any of the Defendants.

74. During the entry and search, officers broke open the inner and outer front entry doors on the ground level of the building, the front door to the Mendez’s apartment, and the closet door in their bedroom. However, on information and belief, defendant officers did not make any City Claims Notification, as required by CPD Special Order S04-19.

ANSWER: Defendants admit that forced entry was made to the outermost and inner door to the ground level of the building. Defendants admit that forced entry was made to the front door to the Mendez’s apartment, but deny that there was any substantial damage to the door as it just popped open. Thus, Defendants deny that their entry resulted in any doors being physically broken. Defendants further deny the allegations in paragraph 74 regarding S04-09 containing a provision that requires a notification.

75. Before they left, officer did not explain how the Mendezes could arrange to have the City repair the damage to their apartment. No one from the City ever contacted the Mendezes or, on information and belief, their landlord or came to inspect or make repairs. On information and belief, plaintiffs’ landlord had to make and pay for all repairs of damage caused by the officers’ breaches.

ANSWER: Defendants deny the allegations in paragraph 75 to the extent the allegations suggest there was no information provided to Plaintiffs regarding the potential for the City of Chicago to repair the doors. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 75.

76. The supervising officer was one of the last officers to leave. He did not provide any name or phone number for plaintiffs or their landlord to contact the City of Chicago regarding damage or repairs.

ANSWER: Defendants deny the allegations in paragraph 76 to the extent the allegations suggest no information was provided to Plaintiffs regarding the potential for the City of Chicago to repair the doors. Defendants admit that Sgt. Egan did not directly provide a name or phone number for Plaintiffs to contact regarding repairs, as he stated in the Body Worn Camera footage that he would “get the City out here” to repair doors.

77. On November 7, 2017, officers terrorized a totally innocent family and departed, leaving behind all of the damage, physical and psychological, for others to cope with in the days, weeks, and years to come.

ANSWER: Defendants deny the allegations in paragraph 77. Defendants further deny that any wrongful conduct or deprivation of Plaintiffs’ rights occurred.

Officers’ Uses of Force Against Jack and Peter and Against Their Parents in the Boys’ Presence Was Totally Unnecessary

78. Peter and Jack presented absolutely no threat, real or apparent, to the police officers entering into and searching their home.

ANSWER: Admitted.

79. Even though they presented no threat, officers repeatedly pointed their guns at them, and other officers did not ask the officers pointing guns at the children to stop doing it.

ANSWER: Defendants deny the allegations in paragraph 79.

80. Mr. Mendez presented absolutely no threat, real or apparent, to the police officers entering into and searching his home, especially after the apartment was secured.

ANSWER: Defendants deny the allegations in paragraph 80 to the extent they suggest that at no time after Defendants entered the residence could Plaintiff Gilbert Mendez have posed any threat. Defendants admit that Mr. Mendez complied with officer requests.

81. Even though he presented no threat, officers repeatedly pointed guns at Mr. Mendez and kept him handcuffed, and other officers did not ask their fellow officers to stop pointing guns at him.

ANSWER: Defendants admit that Plaintiff Gilbert Mendez was handcuffed incident to the execution of the search warrant. Defendants deny the remaining allegations in paragraph 81.

82. In particular, Mr. Mendez did not pose any threat to officers after they discovered that he was not the male target named in the search warrant and that officers were in the wrong apartment.

ANSWER: Defendants admit that after it was discovered that Plaintiff Gilbert Mendez was not the target of the search warrant and that the targets did not reside there, Plaintiff Gilbert Mendez did not pose a direct physical threat.

83. After officers discovered that the warrant was obtained for the wrong apartment, they lacked all probable cause to arrest Mr. Mendez and to keep him in handcuffs.

ANSWER: Defendants deny the allegations as phrased in paragraph 83 as phrased, as Plaintiff Gilbert Mendez was not arrested and was only detained in handcuffs for safety for a period of approximately 10 minutes and that he was informed in the presence of his family that he was not under arrest and that Defendants' presence was due to Defendants' possession of a warrant. Further answering, Plaintiff Gilbert Mendez was un-handcuffed less than a minute and a half after Plaintiff Hester Mendez read the search warrant and informed officers the targets lived upstairs.

84. Similarly, Mrs. Mendez presented absolutely no threat, real or apparent, to the officers who entered and searched her home.

ANSWER: Defendants deny the allegations in paragraph 84 to the extent they suggest that at no time after Defendants entered her residence could Plaintiff Hester Mendez have posed any threat. Defendants admit that Mrs. Mendez complied with officer requests.

85. Even though she presented no threat, officers repeatedly pointed guns at her, and other officers did not ask their fellow officers to stop pointing guns at her.

ANSWER: Defendants deny the allegations in paragraph 85.

86. Mr. and Mrs. Mendez have been harmed by the unnecessary pointing of guns, the unlawful detention, and the unlawful search of their homes.

ANSWER: Defendants deny the allegations in paragraph 86. Defendants further deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

Officers' Unnecessary Uses of Force Traumatized Peter and Jack

87. Chicago police officers' terrorizing conduct toward Peter and Jack Mendez and toward their mother and father in the boys' presence caused Peter and Jack immediate, severe and lasting emotional and psychological distress and injury.

ANSWER: Defendants deny the allegations in paragraph 87. Defendants further deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

88. In addition to witnessing uses of force and threats of imminent violence against themselves and their parents, the boys were also subject to officers shouting and cursing commands and to their mother's understandable distress. This made for one, big, fast, chaotic, unnecessary scene of terror.

ANSWER: Defendants admit that upon entry to the residence commands were shouted by officers that can be heard on the bodyworn camera footage. Defendants deny the remaining allegations in paragraph 88.

89. Prior to November 7, 2017, Peter and Jack were happy, healthy boys in a close, loving family. Prior to this date, they had suffered no emotional or psychological trauma of any kind in their lives. That changed on November 7, 2017 with defendant's actions.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 89 regarding Plaintiffs Peter and Jack Mendez's emotional and/or psychological state or family situation prior to or following November 7, 2017. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 89.

90. Throughout their encounter with police, Jack and Peter were terrified, crying, and pleading with officers. For several minutes, based upon what he witnessed Peter believed

officers were going to shoot and kill his father. Next, the boys believed that their handcuffed father was going to be taken away from them to jail.

ANSWER: Defendants lack knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 90 regarding what Plaintiffs Jack and Peter Mendez thought, felt, or believed. Defendants deny that Plaintiffs Jack and Peter Mendez were “crying” and “pleading” with Defendants throughout the entire time Defendants were in the residence and therefore deny the remaining allegations in paragraph 90. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs’ rights in paragraph 90.

91. Throughout the encounter, the boys felt their hearts pounding in their chests. Both children (and their parents) had trouble sleeping that night and on many subsequent nights. (Mrs. Mendez has a heart murmur, and was put under severe stress that evening but declined to seek emergency medical treatment in order to care for her shaken sons.)

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 91. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs’ rights in paragraph 91.

92. Ever since the incident, Jack and Peter have continued to re-live, in various ways, how terrified they were that day.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 92. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs’ rights in paragraph 92.

93. Both boys now live with recurring nightmares about the incident.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 93. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 93.

94. Peter has recurrent flashbacks of officers surrounding his father with guns pointed down at him. The image is permanently burned into his memory. Peter is afraid to be by himself in any place, even to walk the bathroom by himself at home before bedtime.

ANSWER: Defendants deny any allegations of officers surrounding Mr. Mendez with guns pointed at him, and lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 94. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 94.

95. When Peter tries to talk about the incident, he physically shakes. He appears compelled to talk about the incident extremely quickly, appears to display overwhelming anxiety, and has to take breaks.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 95. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 95.

96. Until recently, Peter had held his emotions about the incident inside and had not talked much about the incident. Ever since the incident, he has had trouble going to the bathroom regularly.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 96. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 96.

97. Jack regularly asks his parents out of the blue if the police are coming back. Whenever either of the boys sees police officers or a police car or hears a siren, he is overcome with feelings of anxiety and fear and re-lives memories of the event. Jack asks in response, “They’re not coming here, right daddy?”

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 97. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs’ rights in paragraph 97.

98. Since the incident, Jack’s verbal communication is very poor. He talks about the incident only with great difficulty. Since the incident, he is easily shaken by ordinary noises and startles easily.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 98. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs’ rights in paragraph 98.

99. Jack has struggled with significant behavioral problems in school as a consequence of the incident. After the incident, he would not do his schoolwork. He would flinch at and investigate all the noises he heard and would hide in coat closets. He is now hyperactive.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 99. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs’ rights in paragraph 99.

100. After the incident, almost every day Jack's parents received phone calls at work from his school about his behavior. It reached the point where the school would just place Jack in the office for the entire day.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 100. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 100.

101. Mr. and Mrs. Mendez had to remove Jack from the school because it lacked the resources to help him.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 101. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 101.

102. Before the incident, Jack received smiley face stickers at school for good behavior almost every day. Since the incident, he has not received any.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 102. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 102.

103. Jack did not have any trouble in school before the incident.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 103. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 103.

104. Before the incident, Jack was outgoing and friendly. Since the incident, he has only wanted to be by himself.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 104. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 104.

105. Peter and Jack exhibited none of these behaviors prior to November 7, 2017. Jack, especially, is now a different kid. This is the direct result of officers' conduct on November 7, 2017.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 105 regarding Plaintiffs Peter and Jack Mendez's prior behavior and/or whether Plaintiff Jack Mendez is now "different." Defendants deny any and all allegations of wrongful conduct and violations of Plaintiffs' rights alleged in paragraph 105.

106. Peter and Jack now continue to experience and exhibit, unabated, these and other signs of severe emotional and psychological trauma and distress.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 106. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 106.

107. On information and belief, both boys either have, or have many of the symptoms of, severe, Post-Traumatic Stress Disorder.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 107. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 107.

108. As a direct result of officers' conduct, both children are now receiving psychiatric treatment and counseling for their trauma inflicted by the Chicago police.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 108 regarding the children receiving treatment. Defendants deny the remaining allegations in paragraph 108. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 108.

109. Both now require high quality, long-term, costly, psychological care and counseling in order to cope with the long-term, psychological injuries caused by defendants' terrorizing display of unnecessary force.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 109 regarding the children receiving treatment. Defendants deny the remaining allegations in paragraph 109. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 109.

110. Officers' shocking actions of repeatedly pointing and training loaded guns at close range on five- and nine-year-old little boys, pointing guns at close range at their parents in front of the boys, and keeping their father handcuffed unnecessarily in front of the boys, constituted serious abuses of power and authority.

ANSWER: Defendants deny the conduct alleged in paragraph 105 and therefore deny all the allegations in paragraph 110.

111. Officers' actions – including their inaction in the form of failing to intervene to request that the fellow officers stop using excessive force – were directed towards *five- and nine-year-old children*. The boys' sensitivity and vulnerability to such trauma-inducing violence was or should have been known to officers.

ANSWER: Defendants deny any and all allegations by Plaintiffs of excessive force, failure to intervene and “violence” directed toward children, and therefore deny the allegations in paragraph 111.

112. Officers' conduct was undertaken pursuant to, and is part of a long-standing and widespread pattern and practice, *de facto* policy or *MO* of Chicago police officer use of excessive force that includes the use of unnecessary force against and/or in the presence of children.

ANSWER: Defendants deny the allegations in paragraph 112.

**COUNT I – 42 U.S.C. § 1983 *MONELL* POLICY CLAIM
AGAINST THE CITY OF CHICAGO (Plaintiffs Peter and Jack Mendez only)**

Defendants make no answer to this COUNT I of the Fourth Amended Complaint as this Count is not directed to them. To the extent any such allegations are directed to these officer Defendants, they are denied.

113. Plaintiffs Peter and Jack Mendez re-allege all paragraphs 1-112 above and incorporate them into this count, including *Monell*-related allegations of paragraphs 21–27 and 35–38. They assert this claim against defendant City of Chicago.

ANSWER:

114. Defendant officers' use of excessive force against and in the presence of Peter and Jack Mendez was directly and proximately caused by one or more of the following three,

specific, long-standing, interrelated, *failures* of official policy, *lack* of official policy, *de facto* policies, widespread practices, and/or customs of the City of Chicago: 1) a pattern and practice of using unnecessary or excessive force against children (ages 0-14); 2) a systemic failure to investigate and discipline and/or otherwise correct allegations/incidents of officer excessive force against children; and 3) an absence of official policy and training to avoid the unnecessary or excessive use of force against and in the presence of children. Each of these policies existed for more than five years prior to November 7, 2017 (“the *Monell* period”).

ANSWER:

115. First, defendant City of Chicago has a long-standing, pervasive practice and custom of failing to adequately investigate, intervene with and discipline or otherwise correct officers for the use of excessive force involving children (ages 0-14), including unnecessary force directed at children and/or at adult family members in the presence of children.

ANSWER:

116. This set of City’s widespread practices or customs directly encouraged, authorized and caused officers’ conduct toward Peter and Jack Mendez. The City’s historical failure, leading up to November 7, 2017, to properly intervene in, investigate and discipline officer excessive force, especially excessive force against or in the presence of young children, caused officers to act without appropriate restraints in the presence of Peter and Jack.

ANSWER:

117. The City was on notice of each of these failures of official policy from the specific conclusions reached by and the data contained in the 2017 U.S. Department of Justice investigative report and the 2016 PATF report (citations above).

ANSWER:

118. Second, defendant officers' conduct towards and in the presence of Peter and Jack Mendez was undertaken as a direct consequence of defendant City of Chicago's long-standing failure to have *any* affirmative, official policies and/or training explicitly requiring officers to avoid using unnecessary or excessive force against children or against their adult relatives in the children's presence whenever possible.

ANSWER:

119. Even after the findings of the U.S. Department of Justice investigation and the Mayor's PATF were known to City policy makers, the City failed to implement or announce implementation of any reforms that purported to remedy the pattern and practice of unnecessary use of force against and/or in the presence of children, a failure which amounted to a deliberate choice not to take action to prevent the violation of plaintiffs' constitutional rights. City and CPD's failure to implement these explicit policies, reforms and priorities was a cause of the injuries to Peter and Jack Mendez. This lack of official policies, training reforms includes:

a. The continued absence of any provision in CPD's official use of force policy that would explicitly guide or require officers to avoid using force against or in the presence of children, or to use a trauma-informed approach to the use of force in situations where children are present and some force may necessary;

b. CPD's continued failure to add, in its official use-of-force training curriculum, and/or its on-the job training and supervision of officers, any explicit guidance or requirement that officers should avoid using force against or in the presence of children, or to use

a trauma-informed approach to the use of force in situations where children are present and some force may be necessary;

d. CPD's continued failure to require officers seeking residential search warrants to make reasonable efforts before obtaining and/or executing the warrant to determine, through investigation and surveillance, (a) whether children reside in the residence; (b) to avoid entry and search at times when children are likely to be present (c) to de-escalate themselves or change tactics when they unexpectedly encounter young children, and/or (d) to take other precautions to avoid traumatizing children, such as avoiding placing parents and grandparents in handcuffs in the children's presence;

e. CPD's rebuff, both before and since the U.S. Department of Justice and PATF reports were released, of national and local legal and/or community organizations that have offered to provide training on trauma-informed policing with children and/or offered model use-of-force policies that included explicit provision for avoiding the unnecessary use of force against and in the presence of children; and

f. City's and CPD's refusal or failure to propose or agree to any explicit protections for children from excessive force or any provisions requiring a trauma-informed approach to policing children in the federal consent decree it negotiated with the State of Illinois.

ANSWER:

120. Third, the City's lack of official policies to protect children from unnecessary officer use of force, combined with its failure to hold accountable officers who use unnecessary force involving children, have resulted in a *de facto* City policy and practice of using unnecessary or unreasonable force against young children and/or in their presence, as concluded

by the U.S. Department of Justice investigation into the Chicago Police Department and the PATF. The excessive force used against or in the presence of Peter and Jack Mendez was an example of and the result of this *de facto* policy.

ANSWER:

121. Through their combined failures, before and after notice, to enact official policies that protect children from unnecessary force and to hold accountable officers who use excessive force against children, the City has led police officers to be confident that such actions are acceptable and will not be challenged, investigated or disciplined by CPD, CPD's Bureau of Internal Affairs ("BIA"), the Chicago Police Board, the Independent Police Review Authority ("IPRA") or the Civilian Office of Police Accountability ("COPA"). These past failures directly authorized, encouraged and emboldened defendant officers' conduct against and in the presence of Peter and Jack, providing them a general license to use excessive force involving children whenever it suits them.

ANSWER:

122. Through their combined failures, before and after notice, to enact official policies protecting children from unnecessary force and to hold accountable officers who use excessive force against children, final City of Chicago policy-makers – including the Superintendent of police, the Administrator of IPRA (now COPA), the head of CPD's BIA, the Mayor, and the Chicago City Council – condoned, approved, facilitated, encouraged and perpetuated a *de facto* City policy and practice of unnecessary or excessive force against or in the presence of young children.

ANSWER:

123. During all times relevant to the incident involving Peter and Jack Mendez, a “code of silence” pervaded the police accountability system in Chicago, including CPD’s BIA, the Chicago Police Board, IPRA and COPA, contributing to these agencies’ collective failure to properly investigate and discipline officer excessive force, including excessive force against children. Defendant officers’ conduct toward Peter and Jack, including their failure to intervene and failure to report the actions of their colleagues, was the direct result of the long-standing and systematic code of silence at work in the City’s police investigative and disciplinary systems.

ANSWER:

124. By means of its pervasive customs and practices above and its failures, after notice, to remedy officers’ use of unnecessary force against and/or in the presence of young children, defendant City of Chicago has manifested and manifests deliberate indifference to the deprivation of Peter and Jack Mendez’s constitutional rights.

ANSWER:

125. One or more of these three policies, practices and customs collectively, directly and proximately caused the violations of Peter and Jack’s constitutional rights set forth above and below and the resulting injuries, such that the City of Chicago is liable for its officers’ use of excessive force against them and/or in their presence.

ANSWER:

The City of Chicago’s De Facto Policies Resulted in Violations of Peter and Jack Mendez’s Constitutional Right to be Free of Unnecessary or Excessive Force

126. Officers’ conduct toward each Peter and Jack constituted excessive force, in violation of their rights under the Fourth and Fourteenth Amendments to the U. S. Constitution.

ANSWER:

127. Under the circumstances, officers' displays of force against and in the presence of young children was totally unnecessary, unreasonable and unjustifiable.

ANSWER:

128. Under the circumstances, officers' uses of force against Mr. and Mrs. Mendez, undertaken in the presence of and witnessed by Peter and Jack, was totally unnecessary, unreasonable and unjustifiable.

ANSWER:

129. Officers failed to intervene to stop any use of force.

ANSWER:

130. Officers' misconduct was objectively unreasonable and was undertaken intentionally with willful indifference to Peter and Jack's constitutional rights.

ANSWER:

131. Officers' misconduct was undertaken with malice, willfulness, and recklessness indifference to the rights of others.

ANSWER:

132. The officers' misconduct was undertaken pursuant to and as the direct and proximate result of the Defendant City of Chicago's *de facto* policy, failures of official policy, absences of affirmative policy, and pervasive, long-standing practices and customs, as set forth above, such that defendant City of Chicago is liable for officers' use of unnecessary force against and in the presence of Peter and Jack.

ANSWER:

133. As the direct and proximate result of officers' misconduct, plaintiffs Peter and Jack Mendez, have suffered and continue to suffer severe, long-term emotional and mental distress and trauma, including lasting or permanent psychological injury.

ANSWER:

134. One or more officers had reasonable opportunity to prevent or stop the violations of Peter and Jack's constitutional rights but stood by and failed to take any action.

ANSWER:

135. Officers' inactions in this respect were objectively unreasonable and undertaken intentionally, with malice and reckless indifference to Peter and Jack's constitutional rights.

ANSWER:

136. As set forth above, the officer misconduct was undertaken pursuant to the *de facto* policies, long-standing and pervasive practices and customs of defendant City of Chicago, such that the City of Chicago is also liable for officers' failure to intervene.

ANSWER:

137. As the direct and proximate result of officers' misconduct, Peter and Jack Mendez suffered and continue to suffer injury and harm.

ANSWER:

COUNT II – UNLAWFUL SEARCH – INVALID WARRANT
- 42 U.S.C. § 1983 (All Plaintiffs)

138. Plaintiffs re-allege paragraphs 1 - 109 above and incorporate them into this count. All plaintiffs assert this claim against defendant officers Capello, Dari, Guzman and any other as yet unknown officers who participated in obtaining the search warrant for plaintiffs' apartment.

ANSWER: Defendants incorporate their answers to paragraphs 1-109 as if fully re-stated herein.

139. These officers unreasonably obtained or approved a search warrant for plaintiffs' apartment, the wrong apartment, a fact which invalidated the warrant from the start, prior to execution.

ANSWER: Defendants deny the allegations in paragraph 139.

140. Officers' subsequent unauthorized entry and search violated plaintiffs' Fourth Amendment right to be free from unreasonable searches of their persons and homes.

ANSWER: Defendants deny the allegations in paragraph 140.

141. Moreover, officers failed to "knock-and-announce" in circumstances where it was required.

ANSWER: Defendants deny the allegations in paragraph 141.

142. As the sworn applicant for the warrant, officer Capello had a duty to discover and disclose to the issuing magistrate whether he had identified the correct apartment or place to be searched and not the residence of an innocent third party.

ANSWER: Defendants admit that as the affiant of the search warrant, Officer Capello was required to identify to the issuing judge the particular place to be searched. Defendants further admit only those duties imposed by applicable law and deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

143. Officer Capello and the officers named in this count reasonably knew or should have known that one or both intended target(s) of his warrant resided in the building's third floor apartment and that plaintiffs resided in the second floor apartment.

ANSWER: Defendants deny the allegations in paragraph 143.

144. Officer Capello and the other officers had a duty to reasonably investigate and verify information he received from his John Doe complainants who provided him with information about where the intended targets resided.

ANSWER: Defendants admit only those duties imposed by applicable law and deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

145. Such an inquiry was easy to make. Officer Capello and other officers had multiple source of information available to them at the time, had they bothered to use them. They could have contacted the building's landlord. They could have contacted a utility company supplying energy to the building. They could have utilized CPD's own information sources, such as Accurant, which assists officers in identifying apartments and the persons residing in them.

ANSWER: Defendants deny the allegations in paragraph 145 to the extent they suggest that Defendants in any way violated the law in gathering the information that resulted in the issuance of the search warrant. Defendants deny the remaining allegations, which are conclusory, in this paragraph and deny that any wrongful conduct or violations of Plaintiffs' rights occurred.

146. However, on information and belief, officer Capello and others did not conduct any investigation or verification or failed to conduct a reasonable one.

ANSWER: Defendants deny the allegations in paragraph 146.

147. Consequently, in their complaint for search warrant defendant officers identified the wrong apartment, plaintiffs' apartment, a place they never had probable cause to enter and

search. Because of officers' failed to independently investigate and verify the place to be searched, theirs was not a good faith error.

ANSWER: Defendants deny the allegations in paragraph 147.

148. Lieutenant Dari approved Capello's application for search warrant without ensuring that officer Capello and other officers had performed the due diligence required by CPD Special Order S04-19.

ANSWER: Defendants deny the allegations in paragraph 148.

149. Officers' actions in these respects were objectively unreasonable and were undertaken intentionally, with malice and reckless indifference to plaintiffs' constitutional rights.

ANSWER: Defendants deny the allegations in paragraph 149.

150. As the direct and proximate result of officers' misconduct, plaintiffs suffered and continue to suffer injury and harm.

ANSWER: Defendants deny the allegations in paragraph 150 and deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

Defendant Officers' Conduct was Willful and Wanton or Grossly Negligent

151. Defendant Officers' conduct under this count merits an award of punitive damages to plaintiffs. Defendant officers' shocking inaction in failing to perform required and basic reasonable due diligence to verify the correct location for a search warrant before raiding and searching citizens' residence constituted an abuse of power and authority. Defendant officers' action – of relying solely on location information provided by a John Doe confidential informant who was a convicted felon with numerous prior arrests for handling and selling narcotics and not conducting their own investigation and surveillance to verify the correct

address, then failing to immediately stop searching, remove handcuffs from Mr. Mendez and leave plaintiffs' apartment – were directed towards honest, hard-working citizens who were totally innocent of all criminal conduct.

ANSWER: Defendants deny the allegations in paragraph 151. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 151.

152. Defendant officers' conduct toward plaintiffs was undertaken with willful and wanton disregard for the rights of others. Officers acted with actual intention or with a conscious disregard or indifference for the consequences when the known safety and health of plaintiffs was involved. Defendant officers acted with actual malice, with deliberate violence, willfully or with such gross negligence as to indicate a wanton disregard of the rights of others.

ANSWER: Defendants deny the allegations in paragraph 152. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 152.

153. In light of the character of defendant officers' actions toward plaintiffs and the lasting or permanent psychological injury that defendants' conduct has caused plaintiffs, especially Peter and Jack Mendez, defendants' conduct merits an award of punitive damages.

ANSWER: Defendants deny the allegations in paragraph 153. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 153.

**COUNT III – SUPERVISORY LIABILITY – UNLAWFUL SEARCH
– INVALID WARRANT – 42 U.S.C. § 1983 (All Plaintiffs)**

154. Plaintiffs re-allege paragraphs 1 – 109, 138 – 153 above and incorporate them into this count. All plaintiffs assert this claim against defendant officer Sgt. Egan

ANSWER: Defendant Sgt. Egan, the only defendant this Count III is directed towards, incorporates the answers to paragraphs 1-109, 138-153 as if fully re-stated herein. All remaining Defendant Officers make no answer to this Count III, but to the extent any allegations herein are directed to them, they are denied.

155. As alleged above, officer Cappello and other officers violated plaintiffs' Fourth Amendment rights by obtaining and exhibiting a search warrant for their apartment, the wrong apartment.

ANSWER: Defendant Sgt. Egan denies the allegations of paragraph 155.

156. When defendant Egan supervised defendant officer Capello's complaint for search warrant investigation before it went to the state's attorney and judge, he failed to ensure that officer Capello performed independent investigation and surveillance to verify that the address and apartment number provided by the John Doe confidential information was accurate. Such verification was essential to establishing probable cause for targets' location, as well as to protecting citizens who were not criminal suspects.

ANSWER: Defendant Sgt. Egan denies the allegations as set forth in paragraph 156.

157. Defendant Egan did not ensure that officer Cappello had verified, through investigation or surveillance, that the address the informant gave him was correct.

ANSWER: Defendant Sgt. Egan denies the allegations as set forth in paragraph 157.

158. On information and believe, defendant Egan knew and should have known that officer Cappello was about to present to the state's attorney and judge, and then to execute, a search warrant that lacked probable cause with respect to 3557 S. Damen, second floor. Alternatively, Defendant Egan was aware that officer Cappello has a practice of conducting poor

investigations in similar situations. Defendant Egan knew that Cappello's warrant (sic) was about to violate plaintiffs' Fourth Amendment rights.

ANSWER: Defendant Sgt. Egan denies the allegations as set forth in paragraph 158.

159. But Defendant Egan nevertheless approved, assisted, condoned or purposely ignored the hole in officer Cappello's search warrant investigation and the impending violation of plaintiffs' Fourth Amendment rights.

ANSWER: Defendant Sgt. Egan denies the allegations as set forth in paragraph 159.

160. Defendant Egan had or undertook the authority, duty, and ability to supervise officer Cappello and to ensure that he verified that the apartment provided by the informant was the correct location to be searched.

ANSWER: Defendant Sgt. Egan denies the allegations and conclusions as phrased in paragraph 160, but admits he was Officer Cappello's sergeant and supervisor at all relevant times.

161. Defendant Egan's actions and omissions were a proximate cause of the ensuing illegal search of plaintiffs' apartment and the resulting injuries that plaintiffs suffered. Had defendant Egan properly supervised officer Cappello, the warrant would not have been executed in plaintiffs' apartment, and plaintiffs would not have been injured.

ANSWER: Defendant Sgt. Egan denies the allegations as set forth in paragraph 161.

**COUNT IV – UNLAWFUL SEARCH/WARRANTLESS “ENTRY”/
FAILURE TO RETREAT – 42 U.S.C. § 1983 (All Plaintiffs)**

162. Plaintiff re-allege paragraphs 1 – 109 and 151 - 153 above and incorporate them into this count. All plaintiffs assert this claim against defendant officers Capello, Donnelly, Egan, Guzman, Hernandez, and Sehner.

ANSWER: Defendants incorporate their answers to paragraphs 1-109 and 151 – 153 above as if fully re-stated herein.

163. These officers' actions of continuing to remain within and search plaintiffs' apartment well after they were on notice that they had entered and were searching the wrong apartment (not the apartment where the intended targets of the warrant resided) constituted a violation of plaintiffs' Fourth Amendment right to be free from unreasonable searches and seizures.

ANSWER: Defendants deny the allegations in paragraph 163.

164. From the moment officers were on notice that they had entered and were searching the wrong apartment, they no longer were authorized to search plaintiffs' home, and they were obligated to cease immediately. They knew they lacked probable cause, and no exigent circumstances existed that justified a warrantless entry or a continued search.

ANSWER: Defendants deny any and all allegations of wrongful conduct and violations of Plaintiffs' rights and therefore deny the allegations in paragraph 164.

165. In the alternative, based on information they gained from and about plaintiffs immediately after entry, officers knew or reasonably should have known that a mistake had been made during the process of obtaining the warrant and that, as a result, officers were at the wrong residence and lacked probable cause.

ANSWER: Defendants deny the allegations in paragraph 165 and deny that any wrongful conduct or deprivation of Plaintiffs' rights occurred.

166. While executing the warrant, officers received detailed information that put them on notice that they had entered and were searching the wrong apartment (i.e., not the targets'

apartment). As indicted (sic) in bodycam video, several of them acknowledged among themselves that they were in the wrong apartment.

ANSWER: Defendants deny that they were provided “detailed information” that immediately put them on notice regarding whether either of the targets were home, in a residence that was the subject of a valid search warrant. Defendants further admit that one of the targets was a Hispanic female, and that they could not immediately discern that Mrs. Mendez was not the Hispanic female target, nor a relative, associate, or friend, but that they were able to verify she was not the female target. Defendants admit that it was eventually determined that the targets of the search warrant were not present and did not in fact reside in Plaintiffs’ residence. Defendants deny that any wrongful conduct or deprivation of Plaintiffs’ rights occurred.

167. Nevertheless, officers did not stop searching; well after they became aware the warrant was drawn for the wrong apartment, they remained in plaintiffs’ apartment and continued searching. Sergeant Egan ordered them to continued searching even after having notice they were in the wrong apartment.

ANSWER: Defendants deny the allegations in paragraph 167. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs’ rights in paragraph 167.

168. One or more officers had a reasonable opportunity to prevent or stop the violations of plaintiffs’ constitutional rights but stood by and failed to take any action.

ANSWER: Defendants deny the allegations in paragraph 168.

169. Officers’ actions in these respects were objectively unreasonable and were undertaken intentionally, with malice and reckless indifference to plaintiffs’ constitutional rights.

ANSWER: Defendants deny the allegations in paragraph 169. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 169.

170. As the direct and proximate result of officers' misconduct, plaintiffs suffered and continue to suffer injury and harm.

ANSWER: Defendants deny the allegations in paragraph 170. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 170.

**COUNT V – FALSE ARREST AND FALSE IMPRISONMENT
- 42 U.S.C. § 1983 (Plaintiffs Mendez and Hester Mendez)**

171. Plaintiffs re-allege paragraphs 1 – 109 and 151 - 153 above and incorporate them into this count. Mr. and Mrs. Mendez asserts this claim against defendant officers Capello, Donnelly, Egan, Guzman, Hernandez, and Sehner.

ANSWER: Defendants incorporate their answers to paragraphs 1-109 and 151 – 153 above as if fully re-stated herein.

172. Officers arrested and imprisoned Mr. and Mrs. Mendez in their own home when, (a) without a warrant for his arrest and without probable cause to arrest him, they (a) handcuffed and/or confined them in their home and (b) kept them handcuffed and/or confined long after they became aware that they were not the persons identified in the warrant and that the warrant was for the wrong apartment (and not the apartment where the intended targets of the warrant resided).

ANSWER: Defendants admit that Plaintiff Gilbert Mendez was detained while handcuffed for a period of approximately 10 minutes, during which time he was either standing up or seated on a couch and not otherwise restrained. Admitted that Hester Mendez was briefly detained while sitting on a couch without any handcuffs. Defendants deny the allegations

in paragraph 172 that Plaintiff Gilbert and Hester Mendez were arrested and deny any remaining allegations as set forth in paragraph 172.

173. Officers' actions constituted a violation of the Mendez's Fourth Amendment right to be free from unreasonable searches and seizures.

ANSWER: Defendants deny the allegations in paragraph 173.

174. When officers handcuffed and/or confined Mr. and Mrs. Mendez, they unlawfully deprived them of their liberty to move about, despite the fact that they had done nothing illegal and that officers had no probable cause for their arrest and imprisonment. This violated plaintiffs' rights under the Fourth and Fourteenth Amendments to the U. S. Constitution.

ANSWER: Defendants deny the allegations in paragraph 174.

175. One or more officers had a reasonable opportunity to prevent or stop the violations of plaintiffs' constitutional rights but stood by and failed to take any action.

ANSWER: Defendants deny the allegations in paragraph 175. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 175.

176. Through physical force and the invalid use of legal authority, officers acted to arrest, restrain and confine plaintiffs to a bounded area.

ANSWER: Defendants admit that Plaintiff Gilbert Mendez and Hester Mendez were temporarily detained pursuant to the execution of a valid search warrant in the living room area. Defendants deny the remaining allegations in paragraph 176 and deny that any wrongful conduct or violation of Plaintiffs' rights occurred.

177. Plaintiffs were acutely aware of and were harmed by officers' confinement, as detailed above. *Inter alia*, Mr. Mendez was extremely concerned about his sons and was unable

to hug and physically comfort them, as officers would not let him out of handcuffs and kept him segregated from his family and confined on a separate couch.

ANSWER: Defendants admit that Plaintiff Gilbert Mendez would have been unable to place his arms around his sons while in handcuffs. Defendants deny that Plaintiff Gilbert Mendez was unable to comfort his sons in any way during his time in the living room, as he was seated near them and able to speak with them, and they in fact remained calm the majority of the time the officers were inside the residence. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 177 regarding Plaintiff Gilbert or Hester Mendez's thoughts during the time he was handcuffed. Defendants deny any remaining allegations in paragraph 177 and deny that any wrongful conduct or violations of Plaintiffs' rights occurred.

178. Officers' actions in this respect were objectively unreasonable and undertaken intentionally, with malice and reckless indifference to plaintiffs' constitutional rights.

ANSWER: Defendants deny the allegations in paragraph 178.

179. As the direct and proximate result of officers' misconduct, plaintiffs suffered and continue to suffer injury and harm.

ANSWER: Defendants deny the allegations in paragraph 179. Defendants deny any and all allegations of wrongful conduct or violations of Plaintiffs' rights in paragraph 179.

COUNT VI – ASSAULT – STATE LAW (All Plaintiffs)

Defendants make no answer to this COUNT VI of the Fourth Amended Complaint as this Count is not directed to them. To the extent any such allegations are directed to Defendants, they are denied.

180. Plaintiffs re-allege and incorporate paragraphs 1 – 109 above in this count. They assert this claim against defendant City of Chicago.

ANSWER:

181. The actions of officers set forth above, including pointing guns at close range at plaintiffs, created reasonable apprehensions in plaintiffs of immediate harmful contact to plaintiffs' persons and that of their parents.

ANSWER:

182. The officers intended to bring about apprehensions of immediate harmful contact in plaintiffs or knew that their actions would bring about such apprehensions.

ANSWER:

183. In the alternative, the conduct of defendant was willful and wanton and constituted a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others and/or their property.

ANSWER:

184. The conduct of defendant in entering and executing a residential search warrant are generally associated with a risk of serious injuries. Numerous prior injuries have occurred to civilians in this context. Officers failed to take reasonable precautions after having knowledge of impending danger to plaintiffs.

ANSWER:

185. The Officers' actions were the direct and proximate cause of plaintiffs' apprehensions.

ANSWER:

186. Plaintiffs have been seriously harmed by officers' actions.

ANSWER:

COUNT VII – BATTERY – STATE LAW (Plaintiff Gilbert Mendez)

Defendants make no answer to this COUNT VII of the Fourth Amended Complaint as this Count is not directed to them. To the extent any such allegations are directed to Defendants, they are denied.

187. Plaintiff Gilbert Mendez re-alleges and incorporates paragraphs 1 – 109 above into this count. He asserts this claim against defendant City of Chicago.

ANSWER:

188. The actions of officers set forth above, including handcuffing plaintiff, who was not a target of the search warrant, brought about harmful and offensive physical contact to plaintiff's person.

ANSWER:

189. The officers intended to bring about harmful and offensive physical contact to plaintiff's person.

ANSWER:

190. In the alternative, the conduct of defendants was willful and wanton and constituted a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others and/or their property.

ANSWER:

191. The conduct of defendants in entering and executing a residential search warrant are generally associated with a risk of serious injuries. Numerous prior injuries have occurred to civilians in this context. Officers failed to take reasonable precautions after having knowledge of impending danger to plaintiffs.

ANSWER:

192. The officers' actions were the direct and proximate cause of harmful and offensive physical contact to plaintiff's person.

ANSWER:

193. Plaintiff was seriously harmed by officers' actions.

ANSWER:

**COUNT VIII – FALSE ARREST AND FALSE IMPRISONMENT
- STATE LAW (Plaintiffs Hester and Gilbert Mendez)**

Defendants make no answer to this COUNT VIII of the Fourth Amended Complaint as this Count is not directed to them. To the extent any such allegations are directed to Defendants, they are denied.

194. Mr. and Mrs. Mendez re-allege paragraphs 1 – 109 above and incorporates them into this count. Plaintiffs assert this claim against defendant City of Chicago.

ANSWER:

195. Officer arrested and imprisoned Mr. and Mrs. Mendez in their own home when, (a) without a valid warrant and without probable to arrest, they handcuffed and/or confined them in their home and (b) they kept them handcuffed and/or confined even after they were aware that they had entered and were searching the wrong apartment (and not the apartment where the intended targets of the warrant resided).

ANSWER:

196. Officers' actions restrained Mr. and Mrs. Mendez and confined them to bounded areas.

ANSWER:

197. Officers intended to restrain and confine plaintiffs to bounded areas within their home.

ANSWER:

198. In the alternative, the conduct of defendants was willful and wanton and constituted a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others and/or their property.

ANSWER:

199. The conduct of defendants in entering and executing a residential search warrant are generally associated with a risk of serious injuries. Numerous prior injuries have occurred to civilians in this context. Officers failed to take reasonable precautions after having knowledge of impending danger to plaintiffs.

ANSWER:

200. Officers' actions caused the restraint and confinement of plaintiffs to bounded areas within their home.

ANSWER:

201. Plaintiffs were harmed by officers' actions in restraining and confining them, as detailed above.

ANSWER:

**COUNT IX – INTENTIONAL AND/OR NEGLIGENT INFLICTION
OF EMOTIONAL DISTRESS – STATE LAW (Plaintiffs Peter and Jack Mendez)**

Defendants make no answer to this COUNT IX of the Fourth Amended Complaint as this Count is not directed to them. To the extent any such allegations are directed to Defendants, they are denied.

202. Plaintiffs Peter and Mendez and Jack Mendez re-allege and incorporate paragraphs 1 – 109 above in this count and assert this claim against defendant City of Chicago.

ANSWER:

203. The actions, omissions and conduct of officers set forth above were extreme and outrageous and exceeded all bounds of human decency.

ANSWER:

204. Officers' actions, omissions and conduct above were undertaken with the intent to inflict and cause severe emotional distress to plaintiffs, with the knowledge of the high probability that their conduct would cause such distress or in reckless disregard of the probability that their actions would cause such distress.

ANSWER:

205. Officers, who occupied positions of special trust and authority, knew, had reason to know or believed that plaintiffs, who were young children were especially vulnerable and fragile.

ANSWER:

206. As a direct and proximate result of officers' extreme and outrageous conduct, undertaken pursuant to the City's policies and practices as set forth above, plaintiffs suffered and continue to suffer long-term, severe emotional distress and trauma.

ANSWER:

207. In the alternative, officers owed plaintiffs a duty of care that they breached when they pointed guns at them, pointed guns at their mother and father, and kept their father handcuffed after they knew they were in the wrong place and that he did not pose a threat. Plaintiffs are direct victims of officers' negligent infliction of emotional distress.

ANSWER:

208. In the alternative again, the conduct of defendants was willful and wanton and constituted a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others and/or their property.

ANSWER:

209. The conduct of defendants in entering and executing a residential search warrant are generally associated with risk of serious injuries. Numerous prior injuries have occurred to civilians in this context. Officers failed to take reasonable precautions after having knowledge of impending danger to plaintiffs.

ANSWER:

210. Officers' conduct was a proximate cause of plaintiffs' injuries and their extreme, severe, long-term emotional distress and trauma.

ANSWER:

COUNT X – TRESPASS – STATE LAW (All Plaintiffs)

Defendants make no answer to this COUNT X of the Fourth Amended Complaint as this Count is not directed to them. To the extent any such allegations are directed to Defendants, they are denied.

211. Plaintiffs re-allege paragraphs 1 – 109 above and incorporate them in this count. Plaintiffs assert this claim against defendant City of Chicago.

ANSWER:

212. Officers physically invaded plaintiffs' right to and enjoyment of exclusive possession of their apartment.

ANSWER:

213. After officers were aware that the search warrant listed plaintiffs' apartment by mistake, such that any lawful right of entry expired at that time, by remaining and continuing to search officers intended to bring about a physical invasion of plaintiffs' apartment.

ANSWER:

214. In the alternative, the conduct of defendants was willful and wanton and constituted a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others and/or their property.

ANSWER:

215. The conduct of defendants in entering and executing a residential search warrant are generally associated with a risk of serious injuries. Numerous prior injuries have occurred to civilians in this context. Officers failed to take reasonable precautions after having knowledge of impending danger to plaintiffs.

ANSWER:

216. Officers' actions caused a physical invasion of plaintiffs' apartment.

ANSWER:

217. Plaintiffs were harmed by officers' physical invasion of their apartment.

ANSWER:

COUNT XI – RESPONDEAT SUPERIOR – STATE LAW (All Plaintiffs)

Defendants make no answer to this COUNT XI of the Fourth Amended Complaint as this Count is not directed to them. To the extent these allegations are directed toward Defendants, Defendants admit that at all times they acted within the scope of their employment as Chicago Police Officers, but deny any wrongful conduct and violations of Plaintiff's rights, and further deny Plaintiffs are entitled to any recovery.

218. Plaintiffs re-allege paragraphs 180 – 217 above and incorporate them into this count. Plaintiffs assert this claim against defendant City of Chicago.

ANSWER:

219. In committing the acts and omissions alleged above, officers were at all times members and agents of CPD and the City of Chicago and were acting within the scope of their employment.

ANSWER:

220. Defendant City of Chicago is, therefore, liable as principal for all common law torts committed by its agents within the scope of their employment.

ANSWER:

COUNT XII – INDEMNIFICATION – STATE LAW (All Plaintiffs)

Defendants make no answer to this COUNT XII of the Fourth Amended Complaint as this Count is not directed to them. To the extent these allegations are directed toward Defendants, Defendants admit at all times they acted within the scope of their employment as Chicago Police Officers, but Defendants deny any wrongful conduct and violations of Plaintiffs' rights, and further deny Plaintiffs are entitled to any recovery.

221. Plaintiffs re-allege and incorporate paragraphs 180 – 217 above. Plaintiffs assert this count against defendant City of Chicago.

ANSWER:

222. Illinois law, 745 ILCS 10/9-102, directs public entities to pay any common law tort judgment for compensatory damages for which employees are held liable within the scope of their employment activities.

ANSWER:

223. Involved officers were and are employees of the City of Chicago who acted within the scope of their employment when committing the actions and omissions detailed above.

ANSWER:

WHEREFORE, for the foregoing reasons, Defendants, CHICAGO POLICE OFFICERS JOSEPH T. CAPELLO IV (#10626); LIEUTENANT SAMUEL DARI (#603); MICHAEL W. DONNELLY (#13784); SERGEANT RUSSELL A. EGAN (#998); MICHAEL J. GUZMAN (#15911); JOSE M. HERNANDEZ (#15925); and ERIC M. SEHNER (#11641), respectfully request that this Court enter judgment in their favor and against Plaintiffs, to assess costs and for any further relief this Court deems just and proper.

AFFIRMATIVE DEFENSES

Without waiver of any of the denials in the above paragraphs, Defendants, CHICAGO POLICE OFFICERS JOSEPH T. CAPELLO IV (#10626); LIEUTENANT SAMUEL DARI (#603); MICHAEL W. DONNELLY (#13784); SERGEANT RUSSELL A. EGAN (#998); MICHAEL J. GUZMAN (#15911); JOSE M. HERNANDEZ (#15925); and ERIC M. SEHNER

(#11641), by and through their attorneys, QUERREY & HARROW, LTD, assert the following Affirmative Defenses to Plaintiffs' Fourth Amended Complaint:

1. Defendant Officers are government officials, namely police officers, who perform discretionary functions. At all times material to the events alleged in Plaintiffs' Second Amended Complaint, reasonable police officers, objectively viewing facts and circumstances then confronting Defendant Officers during the incident which allegedly provides the basis for the present case, could have reasonably believed the actions taken by them were objectively reasonable and were within the constitutional limits that were clearly established at the time. Defendant Officers, therefore, are entitled to qualified immunity.

2. As to any state law claim, under the Illinois Tort Immunity Act, Defendant Officers are not liable for any of the claims alleged because the actions of Defendant Officers with respect to Plaintiffs were based upon the information and circumstances known to those Defendant Officers at the time and were discretionary for which they are immune from liability. 745 ILCS 10/2-201.

3. As to any state law claim, under the Illinois Tort Immunity Act, Defendant Officers are not liable for any claims alleged because a public employee is not liable for his or her acts or omissions in the execution or enforcement of any law, unless such acts or omissions constitute willful and wanton conduct. 745 ILCS 10/2-202.

4. As to any state law claim, under the Illinois Tort Immunity Act, Defendant Officers are not liable for any of the claims alleged because a public employee, as such, and acting within the scope of his or her employment, is not liable for any injury caused by the act or omission of another person. 745 ILCS 10/2-204.

5. Plaintiffs are not entitled to attorney's fees for their state law claims. *See Pennsylvania Truck Lines, Inc. v. Solar Equity Corp.*, 882 F.2d 221, 227 (7th Cir. 1989); *Kerns v. Engelke*, 76 Ill. 2d 154, 166, 390 N.E.2d 859, 856 (1979).

6. An award of punitive damages would deprive the Defendant Officers of due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution where:

- (a) liability for punitive damages has not been proven beyond a reasonable doubt, or at least by clear and convincing evidence; and
- (b) the award of punitive damages is disproportionate to actual damages.

JURY DEMAND

Defendants demand a trial by jury.

Respectfully submitted,

Defendants, CHICAGO POLICE OFFICERS JOSEPH T. CAPELLO IV (#10626); LIEUTENANT SAMUEL DARI (#603); MICHAEL W. DONNELLY (#13784); SERGEANT RUSSELL A. EGAN (#998); MICHAEL J. GUZMAN (#15911); JOSE M. HERNANDEZ (#15925); and ERIC M. SEHNER (#11641)

BY: s/Larry S. Kowalczyk
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